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OFFICE OF PETITIONS

In re Application of   :
Wunibald Frey et al   :
Application No. 10/088,383   : DECISION ON PETITION
Filed: July 26, 2002   : UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. 10191/2344   :

This is a decision on the petition, filed June 29, 2005, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment.

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.
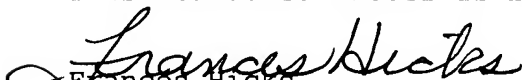
As to petitioner's request for a refund of the issue fee, petitioner's attention is directed to MPEP §1308.01 which provides that a refund may be requested **if the Office has withdrawn the application from issue for the purpose of reopening prosecution** . However, in the instant application, the Office has not reopened prosecution of the application. Also, note 37 CFR 1.26 which states:

> The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

The payment of the issue fee was owed and required by law at the time of payment thereof. Therefore, payment was not made by mistake or in excess of that required nor was there a mistake in payment as contemplated by 37 CFR 1.26. Therefore, it would not be appropriate to refund this fee. For these reasons, the $1,400 issue fee submitted is not refundable.

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This abandoned matter is being referred to Files Repository.

Frances Hicks
Petitions Examiner
Office of Petitions